

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Appeal
of:

RIAN T.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2001020351

Proceedings under the Lanterman
Developmental Disabilities Services Act,
Welf. & Instit. Code Sections 4500 et
seq.

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Torrance on April 6, 2001. The Service Agency was represented by Dolores Burlison, Manager of Rights Assurance. Claimant was not present but represented by his father.

The Service Agency presented documentary evidence and written argument (Exh. A - S). Claimant presented the testimony of the father and documentary evidence and written argument (Exhs. 1A - 10).

Oral and documentary evidence having been received and the matter submitted for decision, the Administrative Law Judge finds as follows:

ISSUE

The issue presented for decision is whether the Service Agency is required to provide speech and language therapy and legal representation for claimant while claimant is pursuing a due process hearing with the school district.

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FACTUAL FINDINGS

1. Claimant Rian T. is an eight-year child who has been diagnosed with autism. Since 1996, claimant has been a client of and receiving services from Harbor Regional Center (hereinafter Service Agency).

2. Claimant lives with his parents in an unincorporated area of Los Angeles County near Torrance. Claimant is a student and receiving educational services from the Los Angeles Unified School District (hereinafter school district). He has been enrolled in the Aphasia language-based program at Lomita Magnet School for the past two or three years and has not been receiving speech and language therapy from the school district.

3. In March 2000, the Service Agency developed an Individual Family Service Plan for claimant. Claimant requested, in part, speech and language therapy but the Service Agency denied the request on the basis that, under Welfare and Institutions Code Section 4648(a)(8), the school district had legal responsibility to provide said service and that regional center funds should not be used to supplant the budget of the school district. Claimant appealed the denial of his request for speech and language therapy.

4. (A) On June 17, 2000, before the Office of Administrative Hearings, in the Decision in the Matter of the Claim of Rian ("RJ") T., Claimant vs. Harbor Regional Center, Service Agency, Case No. 2000040152, Administrative Law Judge Paul M. Hogan found, in part, that a complete speech and language evaluation, including formal testing to determine specific areas of language strength and deficit, was recommended for the development of a comprehensive plan to meet claimant's needs. It was concluded evaluations and assessments are not therapies or services and remain the responsibility of the regional center in developing a program plan that fully assesses the needs of the consumer. Judge Hogan concluded and ordered that "[c]laimant's program plan should be further modified, after appropriate development by all parties involved, so as to provide for formal evaluations and assessments as to claimant's specific needs in the areas of speech and language . . ."

(B) Furthermore, Judge Hogan concluded and ordered that "[c]laimant's program plan should be further modified, after appropriate development by all parties involved, to provide for appropriate advocacy by the service agency in due process proceedings in claimant's school district." Determining that Welfare and Institutions Code Section 4648(b) requires more than token advocacy for the consumer on part of the service agency to achieve the objectives of the consumer's program plan, it was concluded the regional center's advocacy must include adequate presentations of a consumer's needs and "the conduct of necessary due process hearings before the school district, including legal representation if necessary." The Decision then further concluded and ordered that "in the event the normal advocacy resources are

unavailable or ineffective, such [legal] representation should be funded on a private basis by the service agency." [Emphases added]

5. (A) Pursuant to the Decision and Order in Case No. 2000040152, the Service Agency approved a speech and language evaluation for claimant. In or about August 2001, claimant was evaluated over three sessions by Maureen Johnston, M.A., C.C.C., a speech and language pathologist in Torrance. Ms. Johnston took a history from the mother and claimant was administered the Clinical Evaluation of Language Fundamentals--Third Edition, Test of Pragmatic Language, and the Goldman Fristoe 2 Test of Articulation.

(B) Ms. Johnston reached the clinical impression that claimant has average competence in understanding language structure and form and word knowledge; is mildly or moderately impaired in understanding concepts and oral directions, using word structures, formulating intent-driven sentences, and listening performance; and is severely impaired in repeating sentences verbatim, pragmatics, and speech. Claimant has a severe lisp requiring treatment.

(C) Said speech and language pathologist opined that claimant needs an alternative to his current aphasia class provided by the school district. Based on her evaluation and clinical impressions, Ms. Johnston recommended claimant receive the intensive, computer-driven Fast ForWord language and reading program, individual language therapy for 60 minutes weekly for six months, and individual speech therapy for 60 minutes weekly for six months. It was recommended that claimant be reassessed in six months.

6. (A) As indicated above, claimant has been enrolled in the Aphasia language-based program at the school district's Lomita Magnet School for past two or three years or so. On or about June 20, 2000, the school district convened an Individualized Education Program meeting with claimant's parents.

(B) On October 5, 2000, the school district held an informal due process conference with claimant's parents and his Service Agency counselor. From this conference, the school district agreed, in pertinent part, to provide claimant with a central auditory processing assessment for the Fast ForWord language and reading program and to pay for one hour weekly of speech and language therapy services to be provided by a non-public agency or private provider. Claimant's parents concurred with the school district.

(C) On October 27, 2000, the school district notified claimant that he had been approved to receive speech and language services by a non-public agency and gave claimant a list of five certified non-public agencies so that he could arrange for services. Claimant's parents found that the school district's list of certified providers included only one provider in the South Bay area and that said provider had a four-month waiting list to begin services. The parents desire a local provider in the South

Bay or Torrance area because the parents work and claimant would have to be driven to any therapy session by his 70-year old grandfather.

(D) On November 3, 2000, claimant's mother asked the Service Agency for the names of speech pathologists in the Torrance area. The Service Agency provided claimant's parents with the names of local speech pathologists Ms. Johnston and Ms. Marianne O'Brien. The school district was willing to pay for claimant to receive speech and language services from Ms. Johnston but the parents found the morning only sessions that she offered not to be convenient. Claimant then saw Ms. O'Brien for speech and language therapy. The parents were pleased with Ms. O'Brien but the school district would not agree to pay for her services because said speech pathologist is apparently not certified by the school district.

7. (A) On December 18, 2000, claimant's father advised the Service Agency counselor that he had decided to appeal the school district's denial of his request that Ms. O'Brien provide speech and language services for claimant. The father also asked the Service Agency to pay for interim speech services by Ms. O'Brien and for legal representation before the school district's due process hearing.

(B) On January 18, 2001, the Service Agency denied claimant's requests for interim speech and language therapy pending the resolution of the due process hearing before the school district and for legal representation in said due process hearing. The Service Agency denied the interim speech and language therapy on the basis that the speech therapy pertains to education areas and should be provided by the school district. The Service Agency denied legal representation because the regional center believed such legal representation was not necessary and offered instead the advocacy services of the counselor and manager of rights assurance.

8. Currently, claimant is not receiving speech and language services from the school district because of the dispute between claimant's parents and the school district over the choice of a speech therapist. Claimant has a due process hearing before the school district scheduled for June 14, 2001, on this issue. Claimant's parents have retained an attorney to represent them and their son in the school district due process hearing. Claimant requests interim speech and language therapy from a speech pathologist of their choice pending resolution of the due process hearing and funding to pay for the private attorney to represent him in the due process hearing.

9. In this fair hearing, the Service Agency first concedes that claimant needs speech and language services but such services are the responsibility of the school district and not the regional center. Second, the Service Agency argues that it should not be required to pay for private legal counsel to represent claimant before the school district because legal counsel is not necessary. The Service Agency complains that it has not been sufficiently informed of the nature of the upcoming due process hearing to make an informed decision whether claimant has been deprived of any right, privilege, or interest such that he would need an attorney. The Service Agency

reiterates its offer to have claimant's counselor and the manager of rights assurance to provide paralegal assistance.

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Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds do not exist under the Lanterman Developmental Disabilities Services Act to grant claimant's request for interim speech and language services while he pursues and resolves his due process dispute with the Los Angeles Unified School District over his choice of a speech pathologist, based on Findings 4 - 5 above.

2. However, grounds do exist the Lanterman Developmental Disabilities Services Act to grant claimant's request for funding for a private attorney to represent him before the school district in the due process hearing, based on Findings 4 and 6 - 9 above.

3. Discussion. Under the Lanterman Developmental Disabilities Services Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code Section 4502.)

The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (Welf. & Inst. Code Section 4685(b).) Services by regional centers must be provided in the most cost-effective and beneficial manner. (Welf. & Inst. Code Sections 4685(c)(3) and 4848(a)(11).)

This matter involves two of the very same questions that were considered and determined in Case No. L-2000040152, which decision was issued only last June 2000 and became a final decision.

First, in Case No. L-2000040152, claimant requested speech and language therapy from the regional center. The prior Administrative Law Judge has already

ordered that Harbor Regional Center conduct only an evaluation for speech and language services for claimant for purposes of developing his program plan. The regional center was not ordered to provide speech and language services under so-called public agency clause of Welfare and Institutions Code Section 4648(a)(8).

Harbor Regional Center has provided claimant with a speech and language evaluation that was then considered by the school district in its decision to approve speech and language therapy. Said therapy has not been provided by the school district because claimant seeks services from a non-certified speech pathologist. Inasmuch as the prior decision determined the regional center need not provide speech and language services, this Administrative Law Judge will not rule otherwise in this matter.

Second, in Case No. L-2000040152, the prior Administrative Law Judge ordered the Service Agency to provide appropriate advocacy in due process proceedings before the claimant's school district. Advocacy would include presentation of claimant's needs, conduct of due process hearings, and, if necessary, legal representation. Legal representation is to be funded on a private basis if normal advocacy resources are unavailable or ineffective.

The Service Agency's argument that legal representation is not necessary because, in large part, it has not been able to discern the nature of the due process hearing is not persuasive. Harbor Regional Center has known since November 2000 that claimant has not been receiving speech therapy from the school district because he wanted a provider located closer to his home in the South Bay area. Claimant's father advised the regional center in mid-December 2000 that he was appealing the school district's denial of his choice of a provider for his son. Rather, on January 10, 2001, the executive director of Harbor Regional Center simply decided that the speech therapy was a school issue and an attorney was not needed.

Furthermore, "the normal advocacy resources" of the regional center should be considered "ineffective" if its staff now claims it is unable to discern the nature of the upcoming due process hearing. Therefore, a plain reading of the order from Case No. 2000040152 would require the regional center to fund or pay for private legal representation for claimant for the due process hearing. The Administrative Law Judge is not inclined to over-rule that earlier decision in absence of a contrary order from a court of competent jurisdiction.

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Wherefore, the Administrative Law Judge makes the following Order:

ORDER

1. The request of claimant Rian T. for Harbor Regional Center funding to pay or reimburse for receipt of speech and language therapy services before and while claimant is pursuing his due process appeal before the Los Angeles Unified School District regarding the delivery of appropriate speech and language therapy by the school district is denied.

2. The request of claimant Rian T. for Harbor Regional Center funding to pay or reimburse him for hiring and/or retaining a private attorney to represent him in the due process hearing before the Los Angeles Unified School District is granted. Harbor Regional Center shall pay the claimant's legal fees and reimburse the parents directly upon presentation of appropriate receipts and/or cancelled checks. However, legal representation shall be limited to the due process hearing on June 14, 2001, shall not include any appeals, and shall be limited in amount to \$2,500 for legal fees.

DATED:

VINCENT NAFARRETE
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision and both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.